

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.80 OF 2005

Hanmant Keshav Dere

...Appellant

Vs.

Pradip Namdeo Dere & Ors.

...Respondents

Mr.Nitin Dhumal for the Appellant

Mr.S.P.Thorat with Ramesh D.Lokhande for Respondent Nos.1 to 3.

CORAM: A.S.OKA,J.

DATE : FEBRUARY 9, 2005.

P.C.:

1. Heard Counsel appearing for the parties. The learned Counsel for the Appellant/Defendant invited my attention to the evidence of Surveyor recorded by the Trial Court and submitted that the Surveyor has not marked boundaries as per the corrected record of the Consolidated scheme. He has invited my attention to paragraph No.16 of the Judgment of the Appellate Court and stated that when the Court Commissioner could not be appointed as the Appellant could not pay fees of the Commissioner, the Appellate Court should have remanded the matter. He submitted that the Respondents have not established their title over the alleged encroached portion.

2. I have considered the submissions made by the learned Counsel for the Appellant. In so far as issue of title is concerned, there are concurrent findings recorded by the

Courts below in favour of the Respondents-Plaintiffs. From the points for determination framed by the Appellate Court it appears that plea of adverse possession was pressed into service at the time of hearing of the Appeal. The plea of adverse possession was taken by the Appellant-Defendant in the trial Court without prejudice to his basic contention that there was no encroachment committed by him. After having perused the findings recorded by the Courts below on the plea of adverse possession, I find that the ingredients of the adverse possession were not established by the Appellant.

3. In so far as evidence of the Surveyor examined before the trial Court is concerned, he has stated that he had taken original record at the time of carrying out the survey and actual possession was marked as per the say of the Appellant and Respondents. The Appellants did not avail of the facility of Court Commissioner as he failed to deposit necessary fees.

4. The findings of fact recorded by the Courts below are based on evidence on record and there is no perversity in the said findings. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE.